Decision 01-09-015 September 6, 2001

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Southern California Edison Company (E 338-E) for Authority to Institute a Rate Stabilization Plan with a Rate Increase and End of Rate Freeze Tariffs.	Application 00-11-038 (Filed November 16, 2000)
Emergency Application of Pacific Gas and Electric Company (U 39 E) to Adopt a Rate Stabilization Plan.	Application 00-11-056 (Filed November 22, 2000)
Petition of THE UTILITY REFORM NETWORK for Modification of Resolution E-3527.	Application 00-10-028 (Filed October 17, 2000)

OPINION ORDERING PACIFIC GAS AND ELECTRIC COMPANY TO ENTER INTO AND APPROVING THE SERVICING AGREEMENT WITH THE CALIFORNIA DEPARMENT OF WATER RESOURCES

Summary

In January of this year, in response to the energy crisis facing California, the Legislature gave the State of California Department of Water Resources (DWR) authority to purchase electricity and sell it to retail customers of California electric utilities. This authority was provided in Assembly Bill 1 of the Legislature's First Extraordinary Session of 2001-2002 (Stats. 2001, Ch. 4) (AB1X).

In January and March 2001, the Commission ordered Pacific Gas & Electric Company (PG&E) to segregate, and hold in trust for the benefit of DWR, certain amounts its customers had paid for DWR's electricity. (Decision (D.) 01-01-061,

D.01-03-081.) This arrangement now needs to be set out with more detail and specificity. The State Treasurer and the Administration have asked the Commission to approve the servicing agreements so the financial community can review those agreements as part of their evaluation of the bond transaction that is currently being undertaken by the Administration and the State Treasurer, so that they can understand DWR's financial situation.

Today, we require PG&E to comply with the servicing agreement proposed by DWR (with certain changes). This agreement sets forth the terms and conditions under which PG&E will provide transmission and distribution of DWR-purchased electricity, as well as billing, collection and related services. In return, DWR will pay PG&E's incremental costs. DWR has requested that the Commission order PG&E to provide the services embodied in this servicing agreement. The provisions contained here establish reasonable formal payment arrangements and will help ensure that PG&E and DWR can continue providing reliable electricity service to PG&E's ratepayers. We will approve the servicing agreement as proposed by DWR, with certain modifications.

Our approval of the servicing agreement is an essential step to the successful sale of the electricity bond issue being prepared by the State Treasurer and the Administration according to a letter dated July 2, 2001 to Commissioner Loretta Lynch, from DWR, the California Department of Finance, and the State Treasurer's Office. (Attached as Appendix B.)

Background Of This Proceeding

On June 27, 2001, DWR sent a letter to the Commissioners requesting that the Commission order PG&E to "provide transmission, distribution, billing, collection and other services relating to the exercise of the Department's powers and the discharge of its duties" under Division 27 of the California Water Code,

and on the terms and conditions as set forth in the proposed servicing agreement between DWR and PG&E. A copy of the proposed servicing agreement was attached to the letter, and is attached to this decision as Appendix A.

On June 28, the Commission's Chief Administrative Law Judge (ALJ) issued a ruling to solicit comments on whether the Commission should order PG&E to provide the requested services on the terms and conditions specified in the proposed servicing agreement. Because the servicing agreement proposes to formalize provisions necessary for the critical role that DWR plays in meeting the electrical needs of PG&E's customers pursuant to AB1X, and for DWR's bond financing, the June 28 Chief ALJ Ruling ordered that the comments on the proposed servicing agreement be filed by July 3, 2001.

Aglet Consumer Alliance (Aglet) and PG&E timely filed responses to the Chief ALJ Ruling.

On July 5, 2001, the Chief ALJ issued a second ruling allowing interested parties to file supplemental reply comments, or responses to the July 3 comments by July 12, 2001. The ruling was issued in response to the July 2, 2001 letter to Commissioner Lynch from DWR, the California Department of Finance, and the State Treasurer requesting that the Commission postpone taking action on certain items related to the issuance of the DWR's power supply revenue bonds until mid-August, after the effective date of legislation providing for expedited judicial review of Commission orders implementing AB1X. This decision is one of the items that was postponed in response to that letter. The Chief ALJ's ruling also recognized that parties were initially given a short time period to file protests and responses regarding PG&E's application.

PG&E and the NewPower Company (NewPower) filed timely supplemental comments.

Creation Of The Proposed Servicing Agreement

California has experienced an electricity crisis of immense magnitude. When AB1X was enacted, PG&E and other investor-owned utilities were unable to convince sellers that they were financially able to purchase electricity on the wholesale market for their customers, resulting in serious concerns about reliability. AB1X authorized DWR to provide electricity to customers of investor-owned utilities to meet those concerns. An integral part of the statute's scheme are provisions allowing DWR to contract with electrical corporations to transmit and distribute that power to retail end-use electric customers. Water Code Section 80106(b) provides:

> "At the request of the department, the commission shall order the related electrical corporation or its successor in the performance of related service, to transmit or provide for the transmission of, and distribute the power and provide billing, collection, and other related services, as agent of the department, on terms and conditions that reasonably compensate the electrical corporation for its services."

DWR's letter of June 27, 2001 requests the Commission to issue such an order. The proposed servicing agreement, among other things, provides a detailed methodology for the remittance of revenues to DWR. This methodology revises and expands upon the methods for the utilities to transfer revenues to DWR set forth in D.01-03-081 and D.01-05-064.

The servicing agreement contains a variety of provisions. It provides for the transmission and delivery by PG&E of power procured by DWR

(Section 2.1),[1] as well as the furnishing of metering services, meter reading services, and billing services by PG&E to DWR (Section 3.1). The servicing agreement addresses how DWR charges shall appear on customer's billings, and how customers shall be notified in the event of changes to the DWR charges (Service Attachment 1, Sections 2.2 and 2.6).

The servicing agreement establishes various fees and charges that DWR shall pay to PG&E to cover the utility's costs of establishing procedures, systems, and mechanisms necessary to perform billing and related services and providing these services on an ongoing basis (Section 7, Section 2.3 of Service Attachment 1, and Attachment G). The Agreement provides that PG&E will be paid its incremental costs. The servicing agreement enables the Commission to adjust PG&E's rate to avoid double recovery of any costs paid by DWR which have already been included in PG&E's rate (Section 7.1). Furthermore, the Commission has jurisdiction to resolve disputes between PG&E and DWR concerning the reasonableness of costs charged to DWR (Service Attachment 1, Section 2.3).

The servicing agreement also establishes data and communication procedures between DWR and PG&E concerning customer usage, utility-retained generation, and energy trade schedules so that DWR can make accurate electricity purchases (Section 2.2). The servicing agreement also includes a methodology for PG&E to segregate, hold in trust, and remit to DWR revenues from the sale of DWR power to customers (Section 4.2). The remittance methodology specifies how payments are to be processed, addressing such

[1] The "Section" references are to the servicing agreement and the "Attachment" references are to the attachments to the servicing agreement.

things as uncollectible balances, reconciliation with the Interim Remittance Methodologies this Commission adopted in previous decisions, and management of partial payments by customers (Attachment B). The servicing agreement also addresses any adjustments associated with the "20/20 program" established by Governor Davis' Executive Order, D-30-01, dated March 13, 2001 (Section 4.3).

Finally, the servicing agreement includes other provisions addressing the consequences of default by either PG&E or DWR (Section 5), confidentiality of information belonging to PG&E's customers, PG&E or DWR (Section 6), retention of and access to PG&E records, and audit rights for DWR and the State of California Bureau of State Audits (Section 8). PG&E is also obligated to provide annual reports to DWR and the Commission (Section 8). The servicing agreement also addresses various other matters.

We conclude that the provisions contained in the servicing agreement properly enable the issuance of bonds developed and structured by the State Treasurer and the Administration. DWR is now selling electricity to customers in PG&E's service territory because PG&E is unable to supply 100% of the load requirements in its territory. As long as DWR performs this purchasing function, mechanisms must be in place to ensure that DWR's electricity is transmitted and distributed to these customers. In addition, a detailed description of how PG&E will fulfill its role as a collection agent is appropriate, especially as it has chosen to seek Chapter 11 reorganization while it handles DWR's and others' money. We also believe it is appropriate for PG&E to provide us with the same information it provides DWR, and we will order it to do so.

The provisions of the servicing agreement relating to transmission and distribution are reasonable because they provide for PG&E to transmit and

distribute DWR's electricity at no additional charge to the utility or to PG&E's end-use customers, as PG&E already records in rates amounts for transmission and distribution and there is no change in costs for handling DWR's power. Meter reading and other necessary revenue cycle services in PG&E's service territory are also provided appropriately. We endorse the remittance methodology contained in the servicing agreement because it clearly establishes that PG&E is acting as a collection agent for DWR. Provisions allowing PG&E to reduce remittances to DWR for the already-tariffed costs of the 20/20 program adopt a reasonable approach to meeting DWR's requirement to pay these costs. As we discussed above, we believe that the incremental method of determining PG&E's costs is appropriate, especially as we may prevent double-recovery by adjusting PG&E's rates.

Finally, the proposed servicing agreement between DWR and PG&E is very similar to the servicing agreements that have been executed by DWR with Southern California Edison Company (SCE) in Application (A.) 01-06-044 and with San Diego Gas & Electric Company (SDG&E) in A.01-06-039. It is reasonable to ensure consistency among the servicing agreements for all three utilities.

However, we will revise two details of the servicing agreement. We eliminate the requirement for a separate line item for DWR charges on customers' bills, as we believe this will cause undue customer confusion. In addition, we will change the provisions concerning dual billing service. Water Code §80106 authorizes DWR to contract "with the related electrical corporation or its successor" for billing services. We respect the Legislature's judgement and do not believe it is cost effective to provide for separate billing by DWR, especially when this Commission maintains the authority to ensure that utilities

comply with the servicing agreement provisions. The Commission is able to ensure compliance with its orders because of monetary and criminal penalties if the utilities or its officers refuse to comply with a Commission decision.

The proposed rate agreement also requires us to ensure that PG&E complies with this order, and we intend to meet those obligations. Furthermore, we retain the ability to reconsider these modifications at a future date if needed. For example, while we see no need for dual billing now, we retain discretion to adopt a different result in a different fact situation.

Discussion of Issues Raised by Parties

Parties raise a number of concerns about the proposed agreement. Aglet states that the proposed servicing agreement could result in double recovery of utility costs, and recommends that the Commission provide explicit protections against such double recovery. Aglet proposes that this be accomplished by ordering DWR to reimburse PG&E for embedded costs incurred by PG&E for metering, meter reading, billing and customer service, rather than incremental costs for such services. Aglet also states that the determination of incremental costs is often disputed, is subject to manipulation by the utility, and its calculation is not specified in the proposed servicing agreement. Aglet recommends that in PG&E's next rate case, the Commission should allocate to the DWR charges[2] a share of PG&E's electric distribution costs and common costs. Aglet also recommends that until the Commission decides PG&E's next

[2] Aglet refers to the "Rate Component" but such a component is not provided for in any of our AB1X implementation decisions. We assume Aglet means DWR charges. (See Section 1.29.)

rate case, the authorized electric distribution revenue requirement should be reduced to reflect the unbundling of embedded costs to the DWR charges.

PG&E contends that Aglet's concerns about double-recovery are already addressed in Section 7.1 of the servicing agreement, which allows the Commission to adjust PG&E's rates to prevent double recovery. Therefore, according to PG&E, nothing further is required. PG&E also states that Aglet's recommendation that DWR reimburse PG&E for embedded costs is inconsistent with Commission policy and practice and should be rejected.

We do not agree with Aglet that DWR should reimburse PG&E for embedded costs, nor do we agree with Aglet's recommendations to allocate to DWR's charges a share of PG&E's distribution costs and common costs. Separating embedded costs between DWR and PG&E would be time-consuming and laborious, yet would result in cost accounting benefits that are negligible at best. The embedded costs of certain services remain the same whether PG&E provides that service to DWR or not. For example, PG&E's metering and meter reading costs are unlikely to change at all whether PG&E bills for DWR power or not. Furthermore, the transmission and distribution services which PG&E will provide DWR under the servicing agreement are already included in PG&E's rates. We believe that there is little to be gained by creating separate categories of costs depending on which entity is purchasing or generating the electricity. We note that Aglet acknowledges that the assignment of embedded costs to either the DWR charges or PG&E rates might not change the overall rates for bundled service. Thus, we will not reduce PG&E's authorized electric distribution revenue requirement to reflect the unbundling of embedded costs to the DWR charges as Aglet suggests.

Even if implemented, Aglet's recommendations address a limited-term situation. DWR's authority was an emergency measure designed to stabilize a crisis. (Water Code §§ 80000 and 80003.) Under the transaction currently being undertaken by the State Treasurer and the Administration, DWR must continue to sell electricity for the life of the bonds. However, AB1X appears to contemplate that the utilities will resume the responsibility of purchasing electricity for their customers (see Water Code § 80260). Given that DWR's role as a power purchaser in the long term may change so long as the bonds are not affected, the benefits of Aglet's recommendations would be of limited value.

However, Aglet raises an important issue regarding the potential to over-estimate incremental costs. We will order subsequent proceedings to review the costs PG&E will charge DWR, and to determine if those costs are reasonable. In doing so, we are not reviewing the reasonableness of DWR's requests for service from the utility, but the reasonableness of the utility's behavior in responding to that request. If we find that the expenses are unreasonable in any part, we will require the utility to reduce its bill to DWR to eliminate any unreasonable expense.

We acknowledge that there is the potential that the costs PG&E will recover from DWR will be greater than incremental costs that are already included in PG&E's rates. Indeed the servicing agreement provides that the Commission may adjust PG&E's rates to avoid double recovery.[3] Accordingly,

[3] Section 7.1 of the servicing agreement states: "Utility acknowledges that the Commission may adjust, with notice to Utility and an opportunity for Utility to be heard, Utility's rates to avoid double-recovery of any costs paid by DWR hereunder which have already been included in Utility's rates."

any concerns about double recovery can be addressed in PG&E's next General Rate Case.

PG&E states that it need not and should not be required to enter into a servicing agreement with DWR because of several unresolved issues that would affect the servicing agreement. Specifically PG&E states that the Commission has not set nor allocated both PG&E's and DWR's respective revenue requirements. PG&E states that this issue must be resolved before determining whether the proposed servicing agreement would require PG&E to pay DWR more than is currently available from customers.

We do not agree that resolution of the revenue requirements for PG&E and DWR is a prerequisite to approving the proposed servicing agreement. The revenue requirements for both entities are indeed under review in this docket, but their specific outcomes are not material to the merits of the proposed servicing agreement that is before us. The servicing agreement outlines various administrative details such as the transfer of revenues from PG&E to DWR, the type of information PG&E must retain and provide to DWR, the circumstances for default by either entity, and fees to be paid by DWR to PG&E. The servicing agreement does not specify how much PG&E collects on behalf of DWR, or the amount PG&E collects on its own account. The servicing agreement is essentially an implementation tool that can be reviewed on its own merits at this time, regardless of what we decide about the respective revenue requirements of either PG&E or DWR. In addition, this decision is being considered at the same time as our decision implementing DWR's revenue requirement.

PG&E also contends that it has substantive disagreements with the proposed draft servicing agreement submitted by DWR. First, PG&E believes that it must secure Bankruptcy Court approval for any contracts that are not "in

the ordinary course of business." PG&E sees the obligations under the servicing agreement as not in the ordinary course of business. According to its interpretation of federal bankruptcy law, PG&E will not and cannot be obligated under the agreement until and unless the Bankruptcy Court approves the agreement. PG&E provided DWR with draft language, which was attached to PG&E's July 3, 2001 comments, that states it would seek Bankruptcy Court approval of the servicing agreement concurrent with Commission approval.

This decision is an order of this Commission. It implements emergency legislation of the State of California. Moreover, this agreement concerns DWR's property, not PG&E's. We are simply ordering PG&E to act as the collection agent for DWR. In general, orders issued by the Commission are to be given full force and effect, and do not require Bankruptcy Court approval for the utility to be obligated to comply. However, this particular servicing agreement has a provision that accommodates PG&E's concern:

> "Utility is a debtor in possession in a Chapter 11 reorganization case pending in the Bankruptcy Court. In the event that Utility elects to have the Bankruptcy Court approve Utility's execution and performance of the Agreement, then it shall be a condition precedent to the effectiveness of the Agreement that Utility shall file with the Commission an order or decision of the Bankruptcy Court approving Utility's execution and performance of the Agreement (in the same form approved by the Commission), which order or decision shall have been issued no earlier than the date of the Commission's order or decision approving the Agreement." (Section 2 of Attachment E.)

Thus, if PG&E believes that it must seek Bankruptcy Court approval for this servicing agreement, it is free to do so. In that case, the servicing agreement will not become effective until such approval has been obtained. Accordingly, we

reject PG&E's suggested revision to the servicing agreement. We do believe, however, that PG&E should quickly decide whether or not to seek Bankruptcy Court approval. Ordering paragraph 4 requires PG&E to promptly notify parties of its decision following the mailing of this decision.

Second, PG&E seeks DWR's commitment to purchase PG&E's full "net short" position. DWR has not made such a commitment to PG&E in the proposed servicing agreement. According to PG&E, the servicing agreements executed by DWR with both SDG&E and SCE commit DWR to purchasing the full net short position for these utilities.

The Commission is not in the position to make commitments on behalf of DWR. DWR's commitment to SDG&E and SCE for the purchase of their respective net short positions are embodied in separate agreements that are referenced in their servicing agreements. These separate agreements, a Restated Letter Agreement for SDG&E and a Memorandum of Understanding (MOU) for SCE, were successfully negotiated between DWR and those two utilities.[4] The lack of a successful negotiation between PG&E and DWR on the net short issue does not preclude this Commission from taking action on the proposed servicing agreement.

PG&E refers to the July 2 letter from DWR et al., requesting the Commission to delay action on servicing agreements until mid-August. In light

[4] As we state in our companion decisions on the SCE and SDG&E servicing agreements, the Commission's actions in approving those respective servicing agreements are not predicated on our approval or disapproval of these MOUs or Letter Agreements.

of the request, PG&E believes it should continue to work with DWR to resolve the issues described above.

As noted in the July 5 Chief ALJ ruling, the letter from DWR et al., has been considered, and parties were given until July 12 to file supplemental comments, protests or responses. Today's decision reflects timely action on the Commission's part to meet the bond financing needs of DWR as set forth in the July 5 letter to Commissioner Lynch. We also note that comments may be filed on this draft decision. If those comments suggest changes amenable to both PG&E and DWR, and are consistent with this decision, they will be considered.

PG&E's comments also refer to the petition to modify D.01-05-064, which the California Energy Commission (CEC) filed on June 21, 2001. The CEC's petition proposes a real-time pricing (RTP) tariff. According to PG&E, DWR would be financially responsible for the payment of incentive costs under the CEC's proposal. PG&E believes that if the RTP proposal were adopted, an agreement would need to be reached between PG&E and DWR to cover PG&E's costs associated with the program. PG&E proposes a modification to the proposed servicing agreement in order to accommodate the RTP program. Specifically, PG&E proposes a new section, "10(d)," which acknowledges the possibility that an RTP program could be adopted by the Commission, and if such occurs, the parties to the servicing agreement shall negotiate an amendment to the agreement and obtain any necessary Commission approvals.

PG&E's recommendation is unnecessary. First, the Commission is addressing the RTP issues in separate proceedings in this docket. (See D.01-08-021.) Second, DWR and PG&E are not precluded from negotiating an amendment to the servicing agreement. This is already provided for in Section 10(a) in the proposed servicing agreement, which states:

> "The Parties acknowledge that compliance with any Commission decision, legislative action or other governmental action (whether issued before or after the Effective Date of this Agreement) affecting the operation of this Agreement…may require that amendment(s) be made to this Agreement. The Parties therefore agree that if either Party reasonably determines that such a decision or action would materially affect the Services to be provided hereunder or the reasonable costs thereof, then upon issuance of such decision or the approval of such action, … the Parties will negotiate the amendment(s) to this Agreement…."

Another party, NewPower, raises different issues. NewPower recommends that the Commission direct the utilities to provide revenue cycle services to DWR under the servicing agreement at exactly the same posted, Commission-approved rates that the utilities charge non-utility electric service providers (ESPs) for such services.

NewPower contends that the servicing agreement is ambiguous as to whether a utility default is required for DWR to switch to non-utility revenue cycle service providers. NewPower expresses concern that DWR, at some future time, may want to procure billing and metering services from non-utility suppliers but would forego potential benefits if the Commission permits the utilities to provide DWR these services at only a nominal fee.

The servicing agreement as proposed is not ambiguous. DWR can switch to non-utility revenue cycle service providers only if PG&E defaults on the servicing agreement. (See Section 3.2 and Section 5.3(a)(ii).) In any event, we will modify the agreement so that DWR may not adopt a dual billing service. Moreover, it is not reasonable to charge DWR the same rates that the utilities charge ESPs for revenue cycle services. DWR is providing electricity to all retail end-use customers in PG&E's service territory, while ESPs provide electricity to

only a limited number of customers. The fees paid by DWR to PG&E are based on lump sum costs provided in Attachment G of the servicing agreement, while the rates paid by ESPs to PG&E are based on a methodology adopted in D.98-09-070.

Water Code § 80106 states:

> "(a) The department may contract with the related electrical corporation or its successor in the performance of related service, for the electrical corporation or its successor in the performance of related service, to transmit or provide for the transmission of, and distribute the power and provide billing, collection, and other related services, as agent of the department, on terms and conditions that reasonably compensate the electrical corporation for its services.
>
> (b) At the request of the department, the commission shall order the related electrical corporation or its successor in the performance of related service, to transmit or provide for the transmission of, and distribute the power and provide billing, collection, and other related services, as agent of the department, on terms and conditions that reasonably compensate the electrical corporation for its services."

The law speaks only of electrical corporations or their successors as the providers of billing, collection and other revenue cycle services to DWR. The legislation is specific in mentioning reasonable compensation to electrical corporations for the services provided, and the legislation contains no reference to other entities such as ESPs providing such services. It is clear that the intent of the legislation is to ensure that PG&E is reasonably compensated for the services it provides, rather than to ensure that other providers of revenue cycle services have an opportunity to compete with PG&E. DWR's current role in providing electricity should cause the least possible increase in the total cost that electric end-use customers pay for billing and related services. Accordingly, we do not

agree with NewPower's recommendation to direct the utilities to provide revenue cycle services to DWR at a higher level than the incremental cost provided in the servicing agreement.

In addition to addressing the concerns raised by the commenters, we also address one other point in the proposed servicing agreement that we mentioned earlier. Section 2.2 of Service Attachment 1 deals with the presentation of DWR charges on utility bills. Subdivision (a) of that section provides for a separate line item for DWR charges on all utility bills.[5] We believe this is undesirable. Electricity bills are already complex and adding a separate line item for DWR will only increase this complexity. Increasingly complex bills are likely to cause customer confusion, and may well dilute the energy conservation message we are trying to convey by the way in which tiered rates are shown on customers' bills. Accordingly, we will revise subdivision (a) of Section 2.2 of Service Attachment 1 to read as follows: "DWR charges shall appear on all Consolidated Utility Bills in the manner and at the time required by Applicable Law and Applicable Tariffs." While DWR charges will not be separately stated on customers' bills, the utility's internal accounting will account separately for DWR charges, so that the utility properly segregates the money it receives on behalf of DWR as DWR's agent from all other monies it received.[6] This revision is limited solely to subdivision (a) of Section 2.2 of Service Attachment 1 and is in no way intended to alter or amend any other provisions thereof or of the servicing agreement or the parties' respective duties or obligations thereunder.

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[5] There is a provision that allows the Commission to order otherwise.

[6] Today's decision specifically orders the utility to maintain internal accounting records and to provide the necessary information to DWR.

The City and County of San Francisco asks us to modify our decision to clearly state that franchise fees must be paid on revenues associated with DWR power. We decline to do so. This issue is outside the scope of this decision. This decision deals with a servicing agreement, which details the obligations of PG&E to transmit, deliver, bill, and collect for DWR power and the obligation of DWR to pay PG&E's incremental costs of providing these services. The servicing agreement addresses the issue of franchise fees only to the extent necessary to ensure that the utility is able to recover its incremental costs from DWR, as authorized by Water Code section 80106. (See section 7.3(b) of the servicing agreement.) Any other issues dealing with franchise fees are beyond the scope of what is before us today.

Conclusion

DWR has requested that the Commission order PG&E to provide the services that DWR requires in order to deliver electricity to end-use customers in PG&E's service territory, and to provide billing and related services in return for DWR's payment of PG&E's reasonable incremental costs. We have reviewed all of the various provisions contained in the proposed servicing agreement including those addressed in comments and protests, and have determined that the servicing agreement is reasonable with the changes we are adopting in this decision. Accordingly, pursuant to Water Code §§ 80106(b) and 80016, we shall order PG&E to provide the services requested by DWR upon the terms contained in DWR's proposed servicing agreement with the revisions described herein. We also conclude that the servicing agreement between PG&E and DWR is necessary to enable the issuance of the bonds developed and structured by the State Treasurer and the Administration as authorized in Water Code § 80130.

Rehearing and Judicial Review

This decision construes, applies, implements, and interprets the provisions of AB1X. Therefore, Public Utilities Code §1731(c) (applications for rehearing are due within 10 days after the date of issuance of the order or decision) and Public Utilities Code §1768 (procedures for judicial review) are applicable (See Stats. 2001-2002, First Extraordinary Session, Ch. 9.) (AB31X).

Comments on Draft Decision

Public Utilities Code Section 311(g)(1) generally requires that the Commission's draft decision be served on all parties, and subject to at least 30 days of public review and comment prior to a vote of the Commission. The time for filing comments to the draft decision was shortened pursuant to Rule 77.7(f). The following parties filed comments to the draft decision: the City and County of San Francisco, PG&E, and DWR. We have considered those comments and have made the changes we deem appropriate to the decision.

Findings of Fact

1. On June 27, 2001, DWR requested the Commission to order PG&E to provide transmission, distribution, billing, collection, and other related services as an agent for DWR on the terms and conditions as set forth the proposed servicing agreement between DWR and PG&E.

2. Pursuant to Water Code §80106(b), DWR may request the Commission to order the utility to provide certain services.

3. The servicing agreement provides a detailed methodology for the remittance of revenues to DWR, and revises and expands upon the methods set forth in D.01-03-081 and D.01-05-064.

4. The servicing agreement establishes various fees and charges that DWR shall pay to PG&E to cover the utility's incremental costs of establishing necessary procedures, systems and mechanisms, and performing its services.

5. The servicing agreement enables the Commission to adjust PG&E's rate to avoid double recovery of any costs paid by DWR which have already been included in PG&E's rate.

6. The servicing agreement establishes data and communication procedures between DWR and PG&E concerning customer usage, utility-retained generation, and energy trade schedules.

7. In order for DWR to perform its purchasing function, mechanisms must be in place to ensure that DWR's electricity is transmitted and distributed to these customers.

8. The remittance methodology in the servicing agreement establishes that PG&E is acting as DWR's collection agent.

9. The proposed servicing agreement between DWR and PG&E is very similar to the servicing agreements that have been executed with DWR by the other two electric utilities.

10. A separate line item for DWR charges is likely to cause customer confusion.

11. Water Code §80106 only authorizes DWR to contract with the utility or its successor for billing services.

12. Separate billing by DWR is not cost effective.

13. The Commission has the authority and the tools necessary to ensure compliance by the utilities with the servicing agreement provisions.

14. The rate agreement decision requires the Commission to ensure that PG&E complies with this order.

15. To protect against double recovery of utility costs, Aglet proposes that DWR reimburse PG&E for the embedded costs of certain services rather than incremental costs.

16. Aglet states that the determination of incremental costs is often disputed, subject to manipulation, and that the incremental cost calculation is not specified in the proposed servicing agreement.

17. Separating embedded costs between DWR and PG&E would be time-consuming and laborious, and would result in cost accounting benefits that are negligible.

18. The embedded costs of certain services remain the same whether PG&E provides that service to DWR or not.

19. Aglet acknowledges that the assignment of embedded costs to either the DWR charges or PG&E's rate might not change the overall rates for bundled service.

20. PG&E believes that it should not be required to enter into the servicing agreement when several issues affecting the servicing agreement are still unresolved.

21. Determination of the revenue requirements for PG&E and DWR is not a prerequisite to approving the proposed servicing agreement.

22. The servicing agreement does not specify how much PG&E collects on behalf of DWR, or the amount PG&E collects on its own account.

23. The servicing agreement can be reviewed on its own merits regardless of what is decided about the revenue requirements of either PG&E or DWR.

24. In general, orders issued by the Commission are to be given full force and effect, and do not require Bankruptcy Court approval for the utility to be obligated to comply.

25. Section 2 of Attachment E of the servicing agreement contains a provision which allows PG&E to seek Bankruptcy Court approval of the servicing agreement.

26. DWR has not made a commitment to PG&E with respect to PG&E's full net short position.

27. The lack of successful negotiations between PG&E and DWR on the full net short does not preclude the Commission from taking action on the proposed servicing agreement.

28. Section 10(a) of the servicing agreement allows DWR and PG&E to negotiate amendments to the servicing agreement.

29. NewPower contends that it is unclear whether a utility default is required before DWR can use a non-utility revenue cycle service provider.

30. DWR can only switch to a non-utility revenue cycle service provider if PG&E defaults on the servicing agreement.

31. DWR is providing electricity to all retail end-use customers in PG&E's service territory, while ESPs provide electricity to only a limited number of customers.

32. The fees paid by DWR to PG&E are based on lump sum costs provided for in the servicing agreement, while the rates paid by ESPs to PG&E are based on the methodology adopted in D.98-09-070.

33. Existing law only refers to electrical corporations or their successors as the providers of billing, collection and other revenue cycle services for DWR.

34. DWR's role in providing electricity should cause the least possible increase in the total cost that electric end-use customers pay for billing and related services.

35. The public interest in approving the servicing agreement between PG&E and DWR in time to facilitate the bond issuance clearly outweighs the public interest in having a full 30-day comment period.

Conclusions of Law

1. The Commission has the jurisdiction to resolve disputes between PG&E and DWR concerning the reasonableness of costs charged to DWR.

2. PG&E shall provide the Commission with the data it supplies to DWR concerning customer usage, utility-retained generation, and electric trade schedules.

3. The Commission should ensure that all three servicing agreements are consistent.

4. The servicing agreement's requirement of a separate line item for DWR charges should be eliminated.

5. The provisions concerning dual billing service should be deleted from the servicing agreement because it is too costly and unnecessary given the Commission's broad enforcement powers over regulated utilities.

6. The Commission should establish a subsequent procedure to review the reasonableness of the incremental costs that PG&E charges DWR.

7. Concerns about double recovery can be addressed in PG&E's next General Rate Case.

8. PG&E should be required to promptly decide whether or not to seek Bankruptcy Court approval of the servicing agreement.

9. NewPower's recommendation to direct the utilities to provide revenue cycle services to DWR at a higher level than the incremental cost provided in the servicing agreement should not be adopted.

10. PG&E should be ordered to provide the services requested by DWR upon the terms contained in DWR's proposed servicing agreement with the revisions described in this decision.

11. The servicing agreement between PG&E and DWR is necessary to enable the issuance of the bonds as authorized in Water Code §80130.

12. This decision construes, applies, implements, and interprets the provisions of AB1X.

O R D E R

IT IS ORDERED that:

1. Pursuant to Water Code §§ 80106(b) and 80016, Pacific Gas & Electric Company (PG&E) is ordered to provide the services requested by the California Department of Water Resources (DWR) in its letter dated June 27, 2001, and on the terms and conditions set forth in the proposed servicing agreement which was attached to that letter (and which is attached to this decision as Appendix A), along with the revisions contained in Ordering Paragraphs 2 and 3.

2. The "Dual Billing Service" references in the servicing agreement shall be revised as follows:

   a. Section 1.10 shall be revised to read as follows: "Billing Services – means Consolidated Utility Billing Service."
   b. Sections 1.27, 1.28 and 3.2 shall be deleted.
   c. The last sentence in Section 3.4, beginning with the words "Upon any election . . .," shall be deleted.
   d. Subdivision (a) of Section 5.3 shall be revised to delete sub-section (ii), and sub-section (iii) shall be renumbered as sub-section (ii).
   e. Subdivision (b) of Section 5.3 shall be deleted.

3. Subdivision (a) of Section 2.2 of Service Attachment 1 shall be replaced in its entirety with the following: "DWR charges shall appear on all Consolidated Utility Bills in the manner and at the time required by Applicable Law and Applicable Tariffs."

4. No later than five days from the mailing date of this decision, PG&E shall file and serve parties in this docket and the Commission's Energy Division, notice of whether or not it elects to seek Bankruptcy Court approval of the servicing agreement pursuant to Section 2 of Attachment of E of the servicing agreement.

5. If PG&E elects to seek Bankruptcy Court approval of the Servicing Agreement, then PG&E shall file with the Bankruptcy Court a motion seeking such approval and shall serve such motion on all necessary parties within five days of the filing of the notice of election referred to in Ordering Paragraph 4.

6. Upon obtaining approval of the Bankruptcy Court, PG&E shall file and serve parties in this docket and the Energy Division, with the order or decision of the Bankruptcy Court approving PG&E's execution and performance of the servicing agreement in the same form approved by the Commission.

7. If PG&E elects to seek Bankruptcy Court approval of the Servicing Agreement, then PG&E shall file and serve parties in this docket and the Commission's Energy Division with periodic status reports on the bankruptcy court motion. Such status reports shall be filed until the bankruptcy court has acted on PG&E's motion and shall be filed no later than 30 days after the date of this decision, and every 10 days thereafter, if the bankruptcy court has not yet acted. These reports shall state and explain the status of PG&E's motion before the bankruptcy court.

a. If PG&E does not file the notice required by Ordering Paragraph 4 within the required period, or thereafter does not file the motion referenced in Ordering Paragraph 5 within the required period, then PG&E shall immediately provide the services requested by DWR on the terms and conditions set forth in the proposed servicing agreement along with the revisions contained in Ordering Paragraphs 2 and 3 without regard to the condition contained in Section 2 of Attachment E of the proposed servicing agreement.

8. PG&E shall provide to the Director of the Energy Division all information transmitted to and received from DWR pertaining to utility-retained generation, and all information transmitted to and received from DWR pursuant to the Servicing Agreement pertaining to customer usage information and electric trade schedules.

a. This information shall be transmitted on a weekly basis, or on a more frequent basis if directed by the Director of the Energy Division.

9. PG&E shall provide upon request by DWR, such additional information as may be reasonably necessary for DWR, at any point in time, to determine on a customer-by-customer basis the amount of DWR charges that have been billed to, or that have accrued with respect to, retail end use customers in the utility's service area.

a. PG&E shall also maintain internal accounting records which identify, on a daily basis, the amounts to be remitted to DWR from each customer.

10. Within 20 days of the date of this decision, PG&E shall file and serve in this docket, a motion seeking approval of the basis on which the incremental costs contained in the servicing agreement and charged to DWR were calculated.

a. DWR shall provide a written response as to whether it is DWR's view that PG&E's incremental costs are reasonable.

This order is effective today.

Dated September 6, 2001, at San Francisco, California.

LORETTA M. LYNCH
President
CARL W. WOOD
GEOFFREY F. BROWN
Commissioners

I dissent.

HENRY M. DUQUE
Commissioner

I dissent.

RICHARD A. BILAS
Commissioner

(APPENDICES A & B)

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